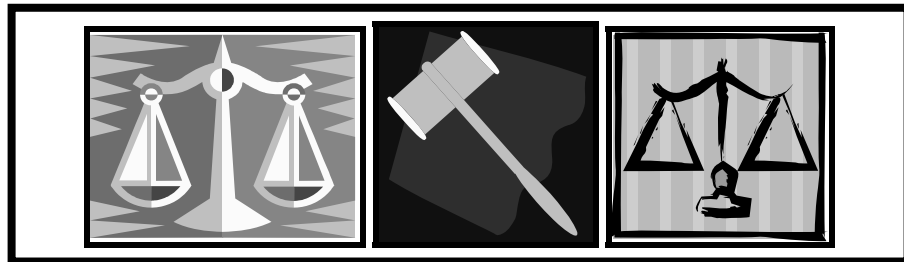


The Statutory Sentencing Guidelines



January 31, 2007
Michigan Hall of Justice
Lansing, Michigan



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- Research, write, and update legal reference publications; and
- Operate the Michigan Supreme Court Learning Center, housed in the Michigan Hall of Justice and designed to introduce children and adults to Michigan's judicial system.

Primary services include providing a comprehensive continuing education program for judicial branch employees; assisting judicial associations and external organizations to plan and conduct training events; providing complete and up-to-date legal reference materials for judges, quasi-judicial hearing officers, and others; maintaining a reference library for use by judicial branch employees; and conducting tours of and other public outreach activities for the Michigan Supreme Court Learning Center.

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Michigan Judicial Institute
Legal Update:
Michigan's Statutory Sentencing Guidelines

January 31, 2007
Michigan Hall of Justice
Lansing, Michigan

AGENDA

9:00 – 9:15 am	Seminar registration/Webcast sign-on
9:15 – 9:45 am	Overview of Guidelines, Crime Groups, Crime Classes, SPEC/Variable Offenses, Grids, Cells, and the 10-Year Gap Rule
9:45 – 10:30 am	Mechanics of Scoring: Prior Record Variables (PRVs) and Scoring Exercise
10:30 – 10:45 am	Break
10:45 – 11:55 am	Mechanics of Scoring: Offense Variables (OVs) and Scoring Exercise
11:55 - Noon	Wrap-Up and Evaluation

Phoenix Hummel

Phoenix Hummel is the Publications Attorney and Editor at the Michigan Judicial Institute (MJJ), where she has worked for the past four years. Before working at MJJ, Phoenix spent two years in the Prehearing Research Division of the Court of Appeals. Phoenix authored the “Felony Sentencing” monograph in MJJ’s Criminal Procedure Monograph Series and much of her time is spent on issues involving felony sentencing and the statutory sentencing guidelines.

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Legal Update:
**Michigan's Statutory
Sentencing Guidelines**

January 31, 2007

Presented by:

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Statutory Sentencing Guidelines

Overview

- Apply to specific offenses punishable by indeterminate sentences committed on or after January 1, 1999
- Apply to habitual offenders, to sentences imposed after probation is revoked, and to certain attempted felony offenses
- Assign point values to characteristics of the offender (prior record variables or PRVs) and to characteristics of the offense (offense variables or OVs)

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Statutory Sentencing Guidelines

Crime Groups

- Each guidelines offense is assigned to one of six crime groups:
 - Crimes against a person ("Person")
 - Crimes against property ("Property")
 - Crimes involving a controlled substance ("CS")
 - Crimes against public order ("Pub ord")
 - Crimes against public trust ("Pub trst")
 - Crimes against public safety ("Pub saf")
- The crime group to which an offense belongs determines which offense variables are scored

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Statutory Sentencing Guidelines

Crime Classes

- Each offense subject to the sentencing guidelines is categorized by a crime class
- Crime classes represent the seriousness of a particular offense and are designated by the letters A through H and M2 (second-degree murder)
- An offense's crime class determines which sentencing grid applies to an offense

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Example:

Statutory List of Guidelines Offenses—MCL 777.16x

MCL	Category	Class	Description	Stat Max
750.478a(2)	Pub ord	H	Unauthorized process to obstruct a public officer or employee	2
750.478a(3)	Pub ord	G	Unauthorized process to obstruct a public officer or employee — subsequent offense	4
750.479(2)	Person	G	Assaulting or obstructing certain officials	2
750.479(3)	Person	G	Assaulting or obstructing certain officials causing injury	4
750.479(4)	Person	D	Assaulting or obstructing certain officials causing serious impairment	10
750.479(5)	Person	B	Assaulting or obstructing certain officials causing death	20
750.479a(2)	Pub saf	G	Fleeing and eluding — fourth degree	2
750.479a(3)	Pub saf	E	Fleeing and eluding — third degree	5

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Statutory Sentencing Guidelines

Variables

Prior Record Variables (PRVs)

- Seven PRVs are scored for each guidelines offense
- PRVs account for the severity of an offender's criminal history by scoring specific characteristics of the offender's history—the number of an offender's prior misdemeanor convictions, for example

Offense Variables (OVs)

- There are twenty OVs; not all are scored for each offense
- OVs measure the severity of the offense by scoring specific characteristics of the offense—the severity of harm caused by the crime, for example

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Statutory Sentencing Guidelines

Attempts

- Guidelines apply to attempts if the attempted offense is a felony in classes A – G; guidelines do not apply to class H attempts
- Crime group of the offense attempted is used to score the attempt
- Crime class of the attempted offense is determined by the attempted offense's original class designation
 - Attempted class A, B, C, and D offenses are scored as class E offenses
 - Attempted class E, F, and G offenses are scored as class H offenses

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Statutory Sentencing Guidelines

"SPEC" and "Variable" Offenses

- Offenses listed in MCL 777.18 are based on underlying felonies
- Crime group designations assigned to MCL 777.18 offenses may be different from the underlying offense's crime group designation
- Score OVs specific to the underlying felony's crime group designation *and* any additional OVs specific to the crime group designation under MCL 777.18
(effective January 9, 2007 – 2006 PA 655)

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Statutory Sentencing Guidelines

"SPEC" and "Variable" Offenses (continued)

- When only one underlying offense is a felony, the crime class is the same as the underlying felony's crime class
- When there are multiple underlying felonies, the crime class is the same as the underlying offense with the highest crime class
(effective January 9, 2007 – 2006 PA 655)
- When no underlying offense is a felony, the crime class is G
(effective January 9, 2007 – 2006 PA 655)
- Statutory maximums are identified as "Variable" because the penalties in MCL 777.18 vary according to the specific underlying felony

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Example:

"SPEC" and "Variable" Offenses—MCL 777.18

MCL	Category	Description	Stat Max
333.7410	CS	Controlled substance offense or offense involving GBL on or near school property	Variable
333.7413(2)or(3)	Pub trst	Subsequent controlled substance violations	Variable
333.7416(1)(a)	CS	Recruiting or inducing a minor to commit a controlled substance felony	Variable
750.157a(a)	Pub saf	Conspiracy	Variable
750.157c	Person	Inducing minor to commit a felony	Variable
750.188	Pub ord	Voluntarily suffering prisoner to escape	Variable
750.237a	Pub saf	Felony committed in a weapon-free school zone	Variable
750.367a	Property	Larceny of rationed goods	Variable

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Example:

Specific Underlying Felonies—MCL 777.13m (in part)

MCL	Category	Class	Description	Stat Max
333.7401(2)(c)	CS	F	Delivery or manufacture of schedule 4 controlled substance	4
333.7401(2)(d)(i)	CS	C	Delivery or manufacture of 45 or more kilograms of marijuana	15
333.7401(2)(d)(ii)	CS	D	Delivery or manufacture of 5 or more but less than 45 kilograms of marijuana	7
333.7401(2)(d)(iii)	CS	F	Delivery or manufacture of less than 5 kilograms or 20 plants of marijuana	4
333.7401(2)(e)	CS	G	Delivery or manufacture of schedule 5 controlled substance	2
333.7401(2)(f)	CS	D	Delivery or manufacture of an official or counterfeit prescription form	20
333.7401(2)(g)	CS	D	Delivery or manufacture of prescription or counterfeit form (other than official)	7

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Example:

Scoring “SPEC” and “Variable” Offenses

First offense

MCL	Category	Class	Description	Stat Max
333.7401(2)(d)(ii)	CS	D	Delivery or manufacture of 5 or more but less than 45 kilograms of marijuana	7

Second offense (underlying felony)

MCL	Category	Class	Description	Stat Max
333.7401(2)(e)	CS	G	Delivery or manufacture of schedule 5 controlled substance	2

SPEC/Variable offense (MCL 777.18)

MCL	Category	Class	Description	Stat Max
333.7413(2)or(3)	Pub trst	SPEC	Subsequent controlled substance violations	Variable

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Example:
Determining the Maximum Penalty for a “SPEC/Variable” Offense

- Find the statutory maximum for underlying offense. According to MCL 333.7401(2)(e), a person who manufactures/delivers/possesses with intent “[a] substance classified in schedule 5 is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.”
- Calculate penalty under MCL 777.18. According to MCL 333.7413(2), a person convicted of a second or subsequent controlled substance offense “may be imprisoned for a term not more than twice the term otherwise authorized or fined an amount not more than twice that otherwise authorized, or both.”
- Result. For an offender **not** being sentenced as an habitual offender, the statutory max for a violation of 7413(2) based on the underlying felony in 7401(2)(e) is not more than 4 years of imprisonment (or a fine of not more than \$4,000.00, or both).

Statutory Sentencing Guidelines
Grids

Sentencing Grid for Class C Offenses—MCL 777.64 Includes Ranges Calculated for Habitual Offenders (MCL 777.21(3)(a)–(c))									
OV Level	PRV Level						Offender Status		
	A 0 Points	B 1-9 Points	C 10-24 Points	D 25-49 Points	E 50-74 Points	F 75+ Points			
I 0-9 Points	0	11*	17*	19	24	38	29	57	
		13*	21	23	30	47		71	HO2
		16*	25	28	36	57		85	HO3
		22	34	38	48	76		114	HO4
II 10-24 Points	0	17*	17*	24	38	57	36	71	
		21	21	30	47	71		88	HO2
		25	25	36	57	85		106	HO3
		34	34	48	76	114		142	HO4

- Nine grids—one each for classes A through H and one for second-degree murder (M2)
- Grids located in MCL 777.61 to 777.69 reflect only minimum ranges for offenders not sentenced as habitual offenders; grids in the *Sentencing Guidelines Manual* and in the *Felony Sentencing Monograph* include ranges for habitual offenders

Statutory Sentencing Guidelines

Sentencing Grid Cells

Intermediate Sanction (asterisked in grids)

0	11*
	13*
	16*
	22

- Upper limit (the *maximum*-minimum) is 18 months or less
- Cannot sentence to prison (absent a departure)
- Can sentence to jail up to 12 months or cell max, whichever is less

Straddle (shaded in grids)

12	24
	30
	36
	48

- Lower limit is 12 months or less
- Upper limit (the *maximum*-minimum) is more than 18 months
- Can sentence to prison within cell range or to jail up to 12 months

Prison (unmarked in grids)

19	38
	47
	57
	76

- Lower limit (the *minimum*-minimum) exceeds 12 months

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Statutory Sentencing Guidelines

Habitual Offender Ranges

12	24	
	$24 \times 0.25 = 6$ $24 + 6 = \mathbf{30}$	HO2
	$24 \times 0.50 = 12$ $24 + 12 = \mathbf{36}$	HO3
	$24 \times 1.00 = 24$ $24 + 24 = \mathbf{48}$	HO4

Cell D-1
Class C grid

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Statutory Sentencing Guidelines

Prior Record Variables

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Statutory Sentencing Guidelines

Scoring PRVs

- Determine which of the statements for each PRV applies to the offender (there may be more than one)
- Of the applicable statements, use the point value corresponding to the statement having the highest number of points
- The sum of all seven PRV scores is the PRV total and represents the offender's PRV level (horizontal axis of a sentencing grid)

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Statutory Sentencing Guidelines

General Rules for Scoring PRVs

- Prior conviction must have been entered (documented in the court record/file) before commission date of sentencing offense
- Assignments to youthful trainee status and convictions set aside under MCL 780.621 – 780.624 are convictions for purposes of scoring an offender's PRVs
- Juvenile adjudications set aside under MCL 712A.18e or expunged are convictions for purposes of scoring PRVs
- More than one conviction resulting from a single previous judicial proceeding may be counted when scoring an offender's PRVs

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Statutory Sentencing Guidelines

10-Year Gap Rule

- Multiple prior convictions/adjudications require knowledge of both commission and discharge dates of each conviction/adjudication
- Prior convictions/adjudications can be scored until a period of 10 years or more separates the discharge date of one offense and the commission date of the next offense
- If the discharge date is unknown, add the length of time the offender was placed on probation or the length of the offender's minimum sentence to the date of the offender's conviction

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Scoring Exercise

Offender: Ivan Togophree

Description of offense: While defendant's mother was hospitalized, he went into her room and took her keys without permission. Defendant's mother alerted a nurse who alerted hospital security. A security officer confronted defendant at the hospital exit and demanded that he stop and surrender the keys. Defendant motioned with his hand in his pocket and claimed he had a gun and would shoot the security officer if the officer tried to prevent him from leaving. The officer reported that defendant was clutching an object that might have been a firearm. The officer permitted defendant to leave and then called the police. Defendant went to his mother's home, stole some electronic equipment and jewelry and left in his mother's vehicle. He was apprehended with his mother's car later that day as he left a local pawn shop. No weapon was recovered.

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Scoring Exercise

Offender: Ivan Togophree

Current offenses:

MCL 750.535(3) Receiving/concealing stolen property-
(dismissed) \$1,000 to \$20,000
Group: Property **Class:** E **Stat max:** 5 yrs

MCL 750.110a(3) Home invasion (second-degree)
(dismissed) **Group:** Person **Class:** C **Stat max:** 15 yrs

MCL 750.88 Assault/intent to commit unarmed robbery
Group: Person **Class:** C **Stat max:** 15 yrs

MCL 750.414 Unlawful use of an automobile
(misdemeanor but listed in guidelines)
Group: Property **Class:** H **Stat max:** 2 yrs

MCL 769.11 Third habitual offender

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Preliminary Determinations

1. If consecutive sentencing is not authorized or mandated, score the crime with the highest crime class.
 - MCL 750.88 – Assault with intent to commit unarmed robbery
 - Crime class: C Crime group: Person
2. Score all PRVs and for crimes against a person under the circumstances of this offense, score OVs 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20.
3. To score PRVs, first determine whether the offender's prior convictions qualify under the 10-year gap rule.
4. Identify the commission date and discharge date of each prior conviction and calculate the time between convictions.

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Scoring Exercise

Offense Date: 11/12/2006

Offender's prior criminal record:

- 10/11/1970 Attempted larceny from a building - MCL 750.360.
1 yr probation - **discharged 11/12/1971.**
- 10/04/1971 Attempted receiving/concealing stolen property -
MCL 750.535(3). 30 days + 2 yrs probation -
discharged 01/15/1974.
- 01/17/1984 Larceny from a motor vehicle - MCL 750.356a(1).
60 days + 2 yrs probation - **discharged 05/30/1986.**
- 05/22/1996 Receiving/concealing stolen property (2 counts) -
MCL 750.535(3). 2 - 5 yrs + 2 yrs probation -
discharged 02/03/2001.
- 04/29/2003 Use of financial transaction device w/o consent -
MCL 750.157n(1). 12 months jail + 3 yrs probation -
not yet discharged at time of current offenses.

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Applying the 10-Year Gap Rule

1. Current offenses - **commission date** of 11/12/2006. **Discharge date** of first prior conviction (PC #1) - offender **not yet discharged**. Count PC #1 = class H.
2. **Commission date** of PC #1 - 4/29/2003. **Discharge date** of next conviction(s) (PCs #2 and #3) - 2/3/2001. Time between commission date of PC #1 and discharge date of PCs #2 and #3 is less than 10 years. Count both PCs #2 and #3 = both class E.
3. **Commission date** of PCs #2 and #3 - 5/22/1996. **Discharge date** of next conviction (PC #4) - 5/30/1986. Time between commission date of PCs #2 and #3 and discharge date of PC #4 is 8 days before the 10-year limit. Count PC #4 = class G.
4. **Commission date** of PC #4 - 1/17/1984. **Discharge date** of next conviction (PC #5) - 1/15/1974. Time between commission date of PC #4 and discharge date of PC #5 is 10 years + 2 days. **DO NOT** count PC #5 or any convictions occurring before PC #5.

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PRV 1 (amendments effective January 9, 2007 – 2006 PA 655) **Prior High Severity Felony Convictions**

- Felony conviction for a crime in class M2, A, B, C, or D, or a felony under federal law or the law of another state corresponding to a crime in class M2, A, B, C, or D—foreign state is not “another state” per *People v Price*, 477 Mich 1 (2006); or
- Felony conviction for a crime punishable by a maximum term of 10 years or more that is not listed in class M2, A, B, C, D, E, F, G, or H; or
- Felony conviction for a crime punishable by a maximum term of 10 years or more that does not correspond to a crime listed in class M2, A, B, C, D, E, F, G, or H.

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Exercise: Scoring PRVs

- PRV 1:** 0 Prior high severity convictions
- PRV 2:** Prior low severity convictions
- PRV 3:** Prior high severity juvenile adjudications
- PRV 4:** Prior low severity juvenile adjudications
- PRV 5:** Prior misdemeanor convictions/adjudications
- PRV 6:** Relationship to the criminal justice system
- PRV 7:** Concurrent or subsequent convictions

Total PRVs:

PRV level:

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PRV 2 (amendments effective January 9, 2007 – 2006 PA 655) **Prior Low Severity Felony Convictions**

- Felony conviction for a crime in class E, F, G, or H, or a felony under federal law or the law of another state corresponding to a crime in class E, F, G, or H (foreign state is not “another state” per *People v Price*); or
- Felony conviction for a crime punishable by a maximum term of less than 10 years that is not listed in class M2, A, B, C, D, E, F, G, or H; or
- Felony conviction for a crime punishable by a maximum term of less than 10 years that does not correspond to a crime listed in class M2, A, B, C, D, E, F, G, or H.

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Exercise: Scoring PRVs

PRV 1: 0 Prior high severity convictions

PRV 2: 30 Prior low severity convictions

PRV 3: Prior high severity juvenile adjudications

PRV 4: Prior low severity juvenile adjudications

PRV 5: Prior misdemeanor convictions/adjudications

PRV 6: Relationship to the criminal justice system

PRV 7: Concurrent or subsequent convictions

Total PRVs:

PRV level:

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PRV 3 (amendments effective January 9, 2007 – 2006 PA 655)

Prior High Severity Juvenile Adjudications

- Adjudication for conduct that if committed by an adult would be a crime in class M2, A, B, C, or D, or a felony under federal law or the law of another state corresponding to a crime in class M2, A, B, C, or D (foreign state is not “another state” per *People v Price*); or
- Adjudication for conduct that if committed by an adult would be a crime punishable by a maximum term of 10 years or more that is not listed in class M2, A, B, C, D, E, F, G, or H; or
- Adjudication for conduct that if committed by an adult would be a crime punishable by a maximum term of 10 years or more that does not correspond to a crime listed in class M2, A, B, C, D, E, F, G, or H.

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Exercise: Scoring PRVs

PRV 1: 0 Prior high severity convictions

PRV 2: 30 Prior low severity convictions

PRV 3: 0 Prior high severity juvenile adjudications

PRV 4: Prior low severity juvenile adjudications

PRV 5: Prior misdemeanor convictions/adjudications

PRV 6: Relationship to the criminal justice system

PRV 7: Concurrent or subsequent convictions

Total PRVs:

PRV level:

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PRV 4 (amendments effective January 9, 2007 – 2006 PA 655)

Prior Low Severity Juvenile Adjudications

- Adjudication for conduct that if committed by an adult would be a crime in class E, F, G, or H, or a felony under federal law or the law of another state corresponding to a crime in class E, F, G, or H (foreign state is not “another state” per *People v Price*); or
- Adjudication for conduct that if committed by an adult would be a crime punishable by a maximum term of less than 10 years that is not listed in class M2, A, B, C, D, E, F, G, or H; or
- Adjudication for conduct that if committed by an adult would be a crime punishable by a maximum term of less than 10 years that does not correspond to a crime listed in class M2, A, B, C, D, E, F, G, or H.

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Exercise: Scoring PRVs

PRV 1: 0 Prior high severity convictions

PRV 2: 30 Prior low severity convictions

PRV 3: 0 Prior high severity juvenile adjudications

PRV 4: 0 Prior low severity juvenile adjudications

PRV 5: Prior misdemeanor convictions/adjudications

PRV 6: Relationship to the criminal justice system

PRV 7: Concurrent or subsequent convictions

Total PRVs:

PRV level:

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PRV 5

Prior Misdemeanor Convictions/ Misdemeanor Juvenile Adjudications

- Misdemeanor conviction under Michigan law, the law of a political subdivision of Michigan, the law of another state, or federal law, or adjudication for conduct that if committed by an adult would be a misdemeanor (foreign state is not "another state" per *Price*)
- Convictions used to enhance the sentencing offense to a felony cannot be counted under PRV 5
- Successful completion of probation under deferred adjudication provisions of MCL 333.7411 is **not** a prior conviction—*People v James*, 267 Mich App 675 (2005)

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PRV 5 (continued)

Prior Misdemeanor Convictions/ Misdemeanor Juvenile Adjudications

- All convictions/adjudications for operating/attempting to operate a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while under the influence/impaired by alcohol, a controlled substance, or both
- Except for the offenses listed above, only convictions/adjudications for offenses against a person or property, weapons offenses, or offenses involving controlled substances may be counted under PRV 5

Note: Most misdemeanor offenses are not subject to the sentencing guidelines. Consequently, the court must determine whether prior misdemeanor convictions fit within the crime groups specified by PRV 5.

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Exercise: Scoring PRVs

PRV 1: 0 Prior high severity convictions

PRV 2: 30 Prior low severity convictions

PRV 3: 0 Prior high severity juvenile adjudications

PRV 4: 0 Prior low severity juvenile adjudications

PRV 5: 0 Prior misdemeanor convictions/adjudications

PRV 6: Relationship to the criminal justice system

PRV 7: Concurrent or subsequent convictions

Total PRVs:

PRV level:

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PRV 6

Relationship to the Criminal Justice System

- Michigan's criminal justice system or a system outside of Michigan
 - Incarcerated or incarcerated and awaiting adjudication/sentencing—includes escapees
 - On parole, probation, or delayed sentence status for felony/misdemeanor
 - On bond awaiting adjudication/sentencing for a felony or misdemeanor
- "Delayed sentence status" includes deferred adjudications under:
 - MCL 333.7411 (controlled substance violations)
 - MCL 762.11 (youthful trainee status)
 - MCL 750.350a (parental kidnapping)
 - MCL 769.4a (domestic assault)
 - MCL 600.1076 (drug treatment court), and
 - MCL 750.430 (impaired healthcare professional)
- Score points when misdemeanor charge is pending at the time offender committed sentencing offense—*People v Endres*, 269 Mich App 414 (2006)

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Exercise: Scoring PRVs

PRV 1: 0 Prior high severity convictions

PRV 2: 30 Prior low severity convictions

PRV 3: 0 Prior high severity juvenile adjudications

PRV 4: 0 Prior low severity juvenile adjudications

PRV 5: 0 Prior misdemeanor convictions/adjudications

PRV 6: 10 Relationship to the criminal justice system

PRV 7: Concurrent or subsequent convictions

Total PRVs:

PRV level:

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PRV 7

Subsequent or Concurrent Felony Convictions

- Felony convictions obtained at the same time as the sentencing offense or felony convictions obtained after commission of the sentencing offense
- Certain felony convictions do **not** count under PRV 7:
 - Felony-firearm convictions
 - Concurrent convictions resulting in mandatory consecutive sentences
 - Concurrent convictions resulting in a consecutive sentence under MCL 333.7401(3)

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Exercise: Scoring PRVs

PRV 1: 0 Prior high severity convictions

PRV 2: 30 Prior low severity convictions

PRV 3: 0 Prior high severity juvenile adjudications

PRV 4: 0 Prior low severity juvenile adjudications

PRV 5: 0 Prior misdemeanor convictions/adjudications

PRV 6: 10 Relationship to the criminal justice system

PRV 7: 10 Concurrent or subsequent convictions

Total PRVs: 50

PRV level: E

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Offense Variables

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Scoring OV's

- Determine which statements apply to the offense, and use the point value corresponding to the statement with the highest number of points
- Unless otherwise indicated, conduct specific to one offense may be used to score a separate but contemporaneous offense
- Unless otherwise indicated, conduct involved in the sentencing offense may be scored under an offense variable even when the conduct is an element of the offense
- The sum of applicable OV scores represents the offender's OV level (vertical axis of a sentencing grid)

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OV 1

Aggravated Use of a Weapon

- Multiple offender provision applies
- *Victim* is each person in danger of injury or loss of life
- When offense is felonious assault, 5 points for displaying/implying a weapon cannot be scored
- Score 5 points when offender used an object to suggest a weapon
- Score 5 points when offender used a chemical irritant, smoke device, or imitation harmful substance or device
- *Weapon* generally includes any item used as a weapon

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Exercise: Scoring OVs

- OV 1: 5** Aggravated use of a weapon
- OV 2:** Lethal potential of weapon possessed/used
- OV 3:** Physical injury to a victim
- OV 4:** (Serious) psychological injury to a victim
- OV 5:** (Serious) psychological injury to a victim's family member
- OV 6:** Intent to kill/injure
- OV 7:** Aggravated physical abuse
- OV 8:** Victim asportation or captivity
- OV 9:** Number of victims
- OV 10:** Exploitation of a vulnerable victim
- OV 11:** Criminal sexual penetration

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OV 2

Lethal Potential of Weapon Possessed/Used

- Multiple offender provision applies
- OV 2's statutory language includes specific definitions for *fully automatic weapon, pistol, rifle, shotgun, and incendiary device*
- Items not intended for use as weapons may be scored under OV 2 when those items are used in a potentially lethal manner (metal pipe or bat)

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Exercise: Scoring OVs

- OV 1: 5** Aggravated use of a weapon
- OV 2: 0** Lethal potential of weapon possessed/used
- OV 3:** Physical injury to a victim
- OV 4:** (Serious) psychological injury to a victim
- OV 5:** (Serious) psychological injury to a victim's family member
- OV 6:** Intent to kill/injure
- OV 7:** Aggravated physical abuse
- OV 8:** Victim asportation or captivity
- OV 9:** Number of victims
- OV 10:** Exploitation of a vulnerable victim
- OV 11:** Criminal sexual penetration

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OV 3

Physical Injury to a Victim

- Multiple offender provision applies
- 100 points must be scored when death results from the offense and homicide is **not** the sentencing offense
- Score is **not** limited to the ultimate result of the offender's conduct; when sentencing offense is homicide, 25 points may be appropriate—*People v Houston*, 473 Mich 399 (2005)
- Points are appropriate only when there is record evidence of a victim's injury; a prosecutor's file notes are not sufficient—*People v Endres*, 269 Mich App 414 (2006)

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OV 3 (continued)

Physical Injury to a Victim

- 50 points must be scored if death results from the offender's operation of/attempted operation of a vehicle, etc. (1) while under the influence/impaired by alcohol and/or drugs, (2) with a specified alcohol content, or (3) with any amount of specified controlled substances in his or her body.
- Cannot score 5 points if bodily injury is an element of the sentencing offense (does not limit scoring more than 5 points if appropriate)
- *Requiring medical treatment* refers to the need for medical attention, not to whether a victim successfully obtained treatment

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Exercise: Scoring OVs

- OV 1:** 5 Aggravated use of a weapon
- OV 2:** 0 Lethal potential of weapon possessed/used
- OV 3:** 0 Physical injury to a victim
- OV 4:** (Serious) psychological injury to a victim
- OV 5:** (Serious) psychological injury to a victim's family member
- OV 6:** Intent to kill/injure
- OV 7:** Aggravated physical abuse
- OV 8:** Victim asportation or captivity
- OV 9:** Number of victims
- OV 10:** Exploitation of a vulnerable victim
- OV 11:** Criminal sexual penetration

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OV 4

(Serious) Psychological Injury to a Victim

- Assess points when a victim's psychological injury may require professional treatment; no requirement that victim seek or obtain treatment
- To assess points under OV 4 requires some evidence of serious psychological injury requiring treatment; an OV 4 score should not be based on presumptive harm
- Evidence of a victim's psychological injury may be introduced by persons other than the victim

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Exercise: Scoring OVs

- OV 1:** 5 Aggravated use of a weapon
- OV 2:** 0 Lethal potential of weapon possessed/used
- OV 3:** 0 Physical injury to a victim
- OV 4:** 0 (Serious) psychological injury to a victim
- OV 5:** (Serious) psychological injury to a victim's family member
- OV 6:** Intent to kill/injure
- OV 7:** Aggravated physical abuse
- OV 8:** Victim asportation or captivity
- OV 9:** Number of victims
- OV 10:** Exploitation of a vulnerable victim
- OV 11:** Criminal sexual penetration

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OV 5

(Serious) Psychological Injury to a Member of a Victim's Family

- Assess points when a member of the victim's family suffers serious psychological injury that may require professional treatment; as with OV 4, no requirement that victim seek or obtain treatment
- Points under OV 5 may be based on a family member's reaction to the victim's death even when the reaction would be a typical response to a death in the family *not* caused by criminal conduct

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Exercise: Scoring OVs

- OV 1:** 5 Aggravated use of a weapon
- OV 2:** 0 Lethal potential of weapon possessed/used
- OV 3:** 0 Physical injury to a victim
- OV 4:** 0 (Serious) psychological injury to a victim
- OV 5:** -- (Serious) psychological injury to a victim's family member
- OV 6:** Intent to kill/injure
- OV 7:** Aggravated physical abuse
- OV 8:** Victim asportation or captivity
- OV 9:** Number of victims
- OV 10:** Exploitation of a vulnerable victim
- OV 11:** Criminal sexual penetration

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OV 6

Intent to Kill or Injure Another Individual

- Must be consistent with the jury's verdict, unless the sentencing judge possesses information that was not available to the jury
- Must score 10 points if the killing is intentional but the killing took place in a combative situation or in response to the decedent's victimization of the offender

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Exercise: Scoring OVs

- OV 1: 5** Aggravated use of a weapon
OV 2: 0 Lethal potential of weapon possessed/used
OV 3: 0 Physical injury to a victim
OV 4: 0 (Serious) psychological injury to a victim
OV 5: -- (Serious) psychological injury to a victim's family member
OV 6: -- Intent to kill/injure
OV 7: Aggravated physical abuse
OV 8: Victim asportation or captivity
OV 9: Number of victims
OV 10: Exploitation of a vulnerable victim
OV 11: Criminal sexual penetration

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OV 7

Aggravated Physical Abuse

- Points for conduct designed to substantially increase the fear and anxiety suffered by a victim (formerly characterized as terrorism), or for conduct involving sadism, torture, or excessive brutality
- *Victim* is any person placed in danger of injury or loss of life
- *Sadism* is "conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender's gratification"
- No requirement that actual physical abuse occurred or that a victim was alive or conscious during conduct not dependent on a victim's awareness—*People v Mattoon*, 271 Mich App 275 (2006); *People v Kegler*, 268 Mich App 187 (2005)

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Exercise: Scoring OVs

- OV 1: 5** Aggravated use of a weapon
OV 2: 0 Lethal potential of weapon possessed/used
OV 3: 0 Physical injury to a victim
OV 4: 0 (Serious) psychological injury to a victim
OV 5: -- (Serious) psychological injury to a victim's family member
OV 6: -- Intent to kill/injure
OV 7: 0 Aggravated physical abuse
OV 8: Victim asportation or captivity
OV 9: Number of victims
OV 10: Exploitation of a vulnerable victim
OV 11: Criminal sexual penetration

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OV 8

Victim Asportation or Captivity

- *Victim* is each person placed in danger of injury or loss of life
- Must score 0 points if the sentencing offense is kidnapping
- Points are appropriate when an offender moves a victim to a place of greater danger
- No requirement that an offender use force to move a victim

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Exercise: Scoring OVs

- OV 1:** 5 Aggravated use of a weapon
- OV 2:** 0 Lethal potential of weapon possessed/used
- OV 3:** 0 Physical injury to a victim
- OV 4:** 0 (Serious) psychological injury to a victim
- OV 5:** -- (Serious) psychological injury to a victim's family member
- OV 6:** -- Intent to kill/injure
- OV 7:** 0 Aggravated physical abuse
- OV 8:** 0 Victim asportation or captivity
- OV 9:** Number of victims
- OV 10:** Exploitation of a vulnerable victim
- OV 11:** Criminal sexual penetration

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OV 9

Number of Victims

- *Victim* is each person placed in danger of physical injury or death
- *Victim* is each person placed in danger of **property loss**
(effective March 30, 2007 – 2006 PA 548)
- Point allocations differentiate between physical danger and danger of property loss based on the number of victims
- 100 points are appropriately scored only in homicide cases
- Victims counted for purposes of OV 9 should include only the persons in danger as a result of the sentencing offense

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Exercise: Scoring OVs

- OV 1: 5** Aggravated use of a weapon
OV 2: 0 Lethal potential of weapon possessed/used
OV 3: 0 Physical injury to a victim
OV 4: 0 (Serious) psychological injury to a victim
OV 5: -- (Serious) psychological injury to a victim's family member
OV 6: -- Intent to kill/injure
OV 7: 0 Aggravated physical abuse
OV 8: 0 Victim asportation or captivity
OV 9: 10 Number of victims
OV 10: Exploitation of a vulnerable victim
OV 11: Criminal sexual penetration

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OV 10

Exploitation of a Vulnerable Victim

- Points should not be scored simply because one or more of the factors are present in the circumstances of the sentencing offense
 - *Exploitation* is an offender's manipulation of the victim for selfish or unethical purposes
 - *Vulnerability* is the victim's readily apparent susceptibility to injury, physical restraint, persuasion, or temptation
- Points are scored for predatory conduct
 - *Predatory conduct* is an offender's preoffense conduct directed at a victim for the primary purpose of victimization

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OV 10 (continued)

Exploitation of a Vulnerable Victim

- Points are scored for exploitation based on:
 - Physical/mental disability, age, domestic relationship, or authority status
 - Difference in physical size/strength, or compromised level of consciousness (victim was intoxicated, asleep, or unconscious)
- Five-year age difference may justify 10 points—*People v Johnson*, 474 Mich 96 (2006)
- *Abuse of authority status* is using a victim's fear of, or deference to, the role played by the offender in the victim's life

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Exercise: Scoring OVs

- OV 1: 5 Aggravated use of a weapon
- OV 2: 0 Lethal potential of weapon possessed/used
- OV 3: 0 Physical injury to a victim
- OV 4: 0 (Serious) psychological injury to a victim
- OV 5: -- (Serious) psychological injury to a victim's family member
- OV 6: -- Intent to kill/injure
- OV 7: 0 Aggravated physical abuse
- OV 8: 0 Victim asportation or captivity
- OV 9: 10 Number of victims
- OV 10: 10 Exploitation of a vulnerable victim
- OV 11: Criminal sexual penetration

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OV 11

Criminal Sexual Penetration

- Score all sexual penetrations arising out of the sentencing offense, except for the one penetration on which a first- or third-degree CSC offense is based
- Multiple sexual penetrations occurring beyond the sentencing offense may be scored in OV 12 (contemporaneous felonious acts) or in OV 13 (continuing pattern of criminal behavior)
- Any conduct scored in OV 11 cannot be scored in OV 12
- Conduct scored in OV 11 may be scored in OV 13 only if the conduct is related to the offender's membership in an organized criminal group

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Exercise: Scoring OVs

- OV 1: 5** Aggravated use of a weapon
- OV 2: 0** Lethal potential of weapon possessed/used
- OV 3: 0** Physical injury to a victim
- OV 4: 0** (Serious) psychological injury to a victim
- OV 5: --** (Serious) psychological injury to a victim's family member
- OV 6: --** Intent to kill/injure
- OV 7: 0** Aggravated physical abuse
- OV 8: 0** Victim asportation or captivity
- OV 9: 10** Number of victims
- OV 10: 10** Exploitation of a vulnerable victim
- OV 11: 0** Criminal sexual penetration

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OV 12

Contemporaneous Felonious Criminal Acts

- A felonious criminal act is contemporaneous if:
 - the act occurred within 24 hours of the sentencing offense, **and**
 - the act has not and will not result in a separate conviction
- Cannot score conduct scored in OV 11
- Felony-firearm should not be counted when scoring OV 12
- A criminal act for which the offender was acquitted may be counted for purposes of OV 12

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Exercise: Scoring OVs

- OV 12:** 0 Contemporaneous felonious acts
- OV 13:** Continuing pattern of criminal behavior
- OV 14:** Offender's role
- OV 15:** Aggravated controlled substance offenses
- OV 16:** Property obtained, damaged, lost, or destroyed
- OV 17:** Degree of negligence exhibited
- OV 18:** Operator ability affected by alcohol or drugs
- OV 19:** Security threat/interference with administration of justice
- OV 20:** Terrorism

OV Total:

OV Level:

68

OV 13

Continuing Pattern of Criminal Behavior

- Count all offenses within 5 years, including the sentencing offense, without regard to whether the conduct resulted in conviction—*People v Francisco*, 474 Mich 82 (2006)
- Count only the specific types of offenses stated in the statute (crimes against a person or property, certain CS offenses, and CSC-1)
- Conduct scored in OVs 11 and 12 may be scored in OV 13 if offense was related to membership in an organized criminal group
- Score 50 points only if the sentencing offense is first-degree CSC
- Count only one controlled substance offense arising from the criminal episode involving the sentencing offense
- Count only one offense involving the same controlled substance

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Exercise: Scoring OVs

OV 12: 0 Contemporaneous felonious acts

OV 13: 10 Continuing pattern of criminal behavior

OV 14: Offender's role

OV 15: Aggravated controlled substance offenses

OV 16: Property obtained, damaged, lost, or destroyed

OV 17: Degree of negligence exhibited

OV 18: Operator ability affected by alcohol or drugs

OV 19: Security threat/interference with administration of justice

OV 20: Terrorism

OV Total:

OV Level:

70

OV 14

Offender's Role

- Consider the entire criminal transaction in which the sentencing offense occurred to determine the offender's role in the offense
- If three or more offenders are involved in the offense, more than one offender may be considered a leader

71

Exercise: Scoring OVs

- OV 12:** 0 Contemporaneous felonious acts
- OV 13:** 10 Continuing pattern of criminal behavior
- OV 14:** 0 Offender's role
- OV 15:** Aggravated controlled substance offenses
- OV 16:** Property obtained, damaged, lost, or destroyed
- OV 17:** Degree of negligence exhibited
- OV 18:** Operator ability affected by alcohol or drugs
- OV 19:** Security threat/interference with administration of justice
- OV 20:** Terrorism

OV Total:

OV Level:

72

OV 15

Aggravated Controlled Substance Offenses

- Number of points scored reflects specific circumstances of offense and identity/amount of CS involved in sentencing offense
- *Deliver* means the actual or constructive transfer of a controlled substance from one person to another person without regard to any monetary exchange
- *Trafficking* means the sale or delivery of actual or counterfeit controlled substances on a continuing basis to another person for further distribution
- *Minor* is an individual 17 years of age or less

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Exercise: Scoring OVs

- OV 12:** 0 Contemporaneous felonious acts
- OV 13:** 10 Continuing pattern of criminal behavior
- OV 14:** 0 Offender's role
- OV 15:** -- Aggravated controlled substance offenses
- OV 16:** Property obtained, damaged, lost, or destroyed
- OV 17:** Degree of negligence exhibited
- OV 18:** Operator ability affected by alcohol or drugs
- OV 19:** Security threat/interference with administration of justice
- OV 20:** Terrorism

OV Total:

OV Level:

74

OV 16

Property Obtained, Damaged, Lost, or Destroyed

- For offenses involving multiple offenders or multiple victims, the value of property involved in the offense may be aggregated
- Money and/or property involved in uncharged offenses or charges dismissed under a plea agreement may be considered
- When property involved was unlawfully obtained, lost to the lawful owner, or destroyed, use the value of the property
- When property involved was damaged, use the monetary amount necessary to restore the property to its preoffense condition
- Score for crimes against a person only if sentencing offense is a violation/attempted violation of MCL 750.110a (home invasion)

75

Exercise: Scoring OVs

- OV 12:** 0 Contemporaneous felonious acts
- OV 13:** 10 Continuing pattern of criminal behavior
- OV 14:** 0 Offender's role
- OV 15:** -- Aggravated controlled substance offenses
- OV 16:** -- Property obtained, damaged, lost, or destroyed
- OV 17:** Degree of negligence exhibited
- OV 18:** Operator ability affected by alcohol or drugs
- OV 19:** Security threat/interference with administration of justice
- OV 20:** Terrorism

OV Total:

OV Level:

76

OV 17

Degree of Negligence Exhibited

- Score for a crime against a person only if the offense/attempted offense involved the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive
- If points were assessed in OV 6 (intent to kill or injure another person), 10 points cannot be scored

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Exercise: Scoring OVs

OV 12: 0 Contemporaneous felonious acts

OV 13: 10 Continuing pattern of criminal behavior

OV 14: 0 Offender's role

OV 15: -- Aggravated controlled substance offenses

OV 16: -- Property obtained, damaged, lost, or destroyed

OV 17: -- Degree of negligence exhibited

OV 18: Operator ability affected by alcohol or drugs

OV 19: Security threat/interference with administration of justice

OV 20: Terrorism

OV Total:

OV Level:

78

OV 18

Operator Ability Affected by Alcohol or Drugs

- *Any bodily alcohol content* is either (1) an alcohol content of .02 grams or more but less than .08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or (2) any presence of alcohol within a person's body from the consumption of alcohol except for alcohol consumption as part of a generally recognized religious service or ceremony
- Score for a crime against a person only if the offense/attempted offense involved the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive

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Exercise: Scoring OVs

- OV 12:** 0 Contemporaneous felonious acts
- OV 13:** 10 Continuing pattern of criminal behavior
- OV 14:** 0 Offender's role
- OV 15:** -- Aggravated controlled substance offenses
- OV 16:** -- Property obtained, damaged, lost, or destroyed
- OV 17:** -- Degree of negligence exhibited
- OV 18:** -- Operator ability affected by alcohol or drugs
- OV 19:** Security threat/interference with administration of justice
- OV 20:** Terrorism

OV Total:

OV Level:

80

OV 19

Threat to Security/Interference with the Administration of Justice

- Conduct that threatens the security of a penal institution or a court
- Force or the threat of force against another person or another person's property to interfere with, attempt to interfere with, or that results in interference with the administration of justice or the rendering of emergency services
- Conduct not involving force or the threat of force to interfere with or attempt to interfere with the administration of justice

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Exercise: Scoring OVs

- OV 12:** 0 Contemporaneous felonious acts
- OV 13:** 10 Continuing pattern of criminal behavior
- OV 14:** 0 Offender's role
- OV 15:** -- Aggravated controlled substance offenses
- OV 16:** -- Property obtained, damaged, lost, or destroyed
- OV 17:** -- Degree of negligence exhibited
- OV 18:** -- Operator ability affected by alcohol or drugs
- OV 19:** 0 Security threat/interference with administration of justice
- OV 20:** Terrorism

OV Total:

OV Level:

82

OV 20

Terrorism

- An *act of terrorism* is a willful and deliberate act that satisfies *all* of the following:
 - The act would be a violent felony in Michigan whether or not it was committed in Michigan, **and**
 - The person committing the act knows or has reason to know that the act is dangerous to human life, **and**
 - The act is intended to intimidate or coerce a civilian population or influence or affect, by intimidation or coercion, the conduct of government or a unit of government.

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OV 20 (continued)

Terrorism

- Points assessed for acts of terrorism committed by using/ threatening to use harmful devices/substances **and** for acts of terrorism committed *without* using/threatening to use harmful devices/substances
- Points assessed for supporting an act of terrorism, a terrorist, or a terrorist organization
- A *terrorist* is any person who engages or is about to engage in an act of terrorism

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Exercise: Scoring OVs

OV 12: 0 Contemporaneous felonious acts
OV 13: 10 Continuing pattern of criminal behavior
OV 14: 0 Offender's role
OV 15: -- Aggravated controlled substance offenses
OV 16: -- Property obtained, damaged, lost, or destroyed
OV 17: -- Degree of negligence exhibited
OV 18: -- Operator ability affected by alcohol or drugs
OV 19: 0 Security threat/interference with administration of justice
OV 20: 0 Terrorism

OV Total: 35

OV Level: IV

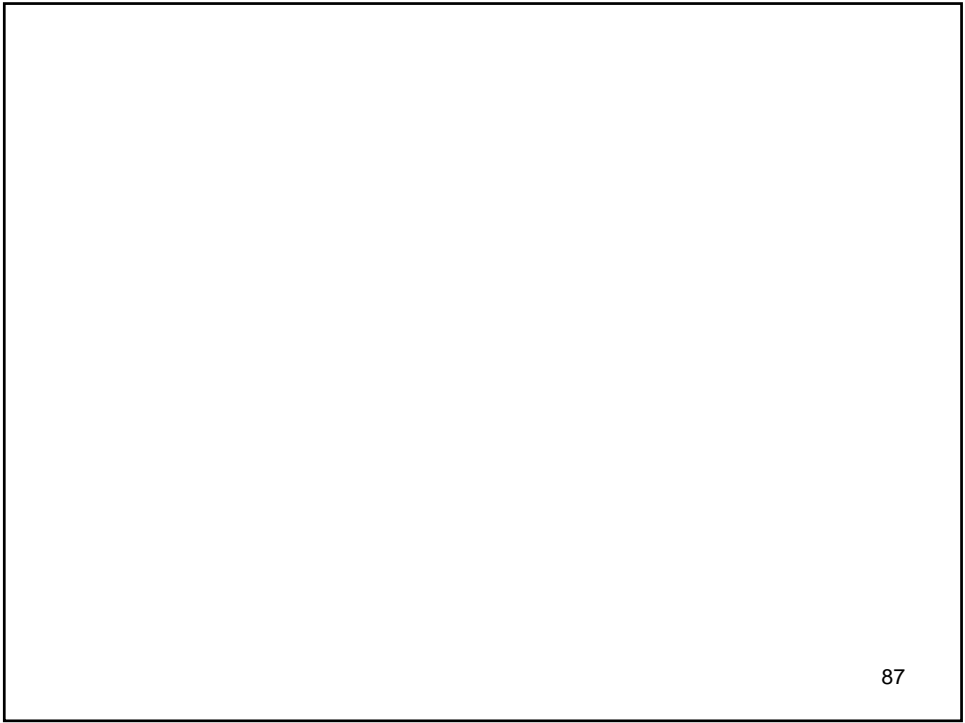
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Exercise: Minimum Sentence

		38		48		76		114		142		172	HO4
		24		38		57		71		86		100	
IV		30		47		71		88		107		125	HO2
35-49	12	36		57		85		106	43	129	50	150	HO3
Points		48		76		114		142		172		200	HO4
		38		57		71		86		100		114	

- In cell E-IV of the sentencing grid for class C offenses, the **minimum** range is **43 to 86 months**. The **maximum** sentence is set by the statute describing the sentencing offense, MCL 750.88 - **15 years** (180 months).
- In cell E-IV of the sentencing grid for class C offenses, the **minimum** range for a **third habitual offender** is **43 to 129 months**.
- The **maximum** sentence for an **habitual offender** is discretionary; for a conviction of MCL 750.88, MCL 769.11 permits the judge to enhance a third habitual offender's sentence to **not more than twice the term** otherwise authorized under the statute - **30 years**.

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